

## Financial Markets Conduct (Heartland Bank Limited Share Sale Plan) Exemption Notice 2016

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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### Notice

#### 1 Title

This notice is the Financial Markets Conduct (Heartland Bank Limited Share Sale Plan) Exemption Notice 2016.

#### 2 Commencement

This notice comes into force on 22 April 2016.

#### 3 Revocation

This notice is revoked on the close of 21 April 2021.

#### 4 Interpretation

(1) In this notice, unless the context otherwise requires,—

**Act** means the Financial Markets Conduct Act 2013

**cancellation period** means, in respect of a shareholder who has accepted an offer, the period during which the shareholder has the right to cancel the resulting agreement pursuant to regulation 173 of the Regulations

**HBL** means Heartland Bank Limited

**normal trading session** has the same meaning as in the NZX participant rules

**NZX** means NZX Limited

**NZX market** means a market operated by NZX in accordance with market rules approved under Part 5 of the Act

**NZX participant rules** means the NZX Limited Participant Rules as approved from time to time under Part 5 of the Act as market rules for NZX markets

**NZX trading and advising firm** means a firm accredited by NZX to participate in NZX markets as an NZX Trading and Advising Firm under the NZX participant rules

**offer** means an unsolicited offer, to which the Regulations apply, to acquire a power to dispose of shares

**off-market trade** has the same meaning as in the NZX participant rules

**participating shareholder** means a shareholder who has accepted an offer made under a share sale plan and not subsequently cancelled the resulting agreement pursuant to regulation 173 of the Regulations

**Regulations** means the Financial Markets Conduct Regulations 2014

**share** means an ordinary share in HBL

**shareholder** means a person who, as at the date of an offer, is the registered holder of shares

**share sale plan** means an arrangement under which HBL or an associated person of HBL acting with HBL's consent, or both, make an offer to shareholders who each hold not more than 10,000 shares.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

## 5 Exemptions

HBL, any associated person of HBL, and every person acting on behalf of any or all of them are, in respect of offers made under a share sale plan, exempted from:

- (a) regulations 163 and 164 of the Regulations; and
- (b) the obligation in regulation 165 of the Regulations to ensure that an unsolicited offer is only made in a disclosure document that complies with regulation 168 of the Regulations; and
- (c) regulation 168 of the Regulations.

## 6 Conditions of exemptions

The exemptions in clause 5 are subject to the following conditions:

- (a) shares of participating shareholders must be sold by an NZX trading and advising firm:
  - (i) in the ordinary course of trading on an NZX market; or
  - (ii) in an off-market trade during a normal trading session and executed within the current quotations for the shares; and
- (b) any expenses payable by a participating shareholder to HBL and its associated persons in connection with participation in the share sale plan must be reasonable and not exceed, in aggregate, direct costs incurred by HBL in relation to sale of the shareholder's shares through an NZX trading and advising firm; and
- (c) all the proceeds of a sale of participating shareholders' shares net of expenses (to the extent that they are not met by HBL or its associated persons) must be distributed to the participating shareholders; and
- (d) the shares must not be sold during the cancellation period; and



- (e) a participating shareholder must be paid their proportion of the proceeds of a sale as soon as practicable after their shares have been sold and, in any event, within 28 days after the date on which the cancellation period for that participating shareholder ends; and
- (f) the disclosure document must contain, in a prominent place, the following information and statements:
  - (i) the number of shares owned by the shareholder and the current market price of shares at a point in time specified in the disclosure document (being a time that is not earlier than 10 working days before the date of the offer), and the total value of that shareholder's shares based on the number of shares and the current market price; and
  - (ii) the following statement immediately following the market price and total value:

"The market price specified above is the market price of your Shares in HBL on the NZX Main Board, which is operated by NZX Limited, as at the Record Date set out below. If you decide to sell your Shares, the price at which they will be sold will be a market price on the day of sale.

You can check the current market price for HBL's Shares on the NZX website [specify either www.nzx.com or NZX HBL website address] or in newspapers. The stock code for Heartland Bank Limited is "HBL"."; and
  - (iii) that the shares will not be sold during the cancellation period; and
  - (iv) details of how shares of participating shareholders will be pooled, if at all, prior to sale and how the proceeds of sale will be allocated between participating shareholders; and
  - (v) all expenses to be charged to the participating shareholder in connection with participation in the share sale plan; and
  - (vi) information about any alternatives the shareholder has to participating in the share sale plan, including that the shareholder does not have to sell the shares and that the shareholder can sell shares directly at any time through a broker; and
  - (vii) the date of the offer and the expiry date and the following statement:

**"Your right to cancel**

If you choose to participate in the Plan but then change your mind, you have the legal right to cancel your participation in the Plan. You can cancel the sale of your Shares under the Plan by contacting HBL's Share Registrar [*insert name of share registrar*] with your name and CSN, stating you wish to cancel, using one of the following methods: [*include as applicable*]

Online: [*include website address*]

Email: [*include share registrar's email address*] (*Please put HBL Share Sale Plan in the subject line for easy identification*)

Mail: [*include share registrar's address*]

Facsimile: [*include share registrar's facsimile number*]



Your cancellation must be received by *[insert name of share registrar]* within 10 working days after the date on which you make your Online Election or HBL's Share Registrar *[insert name of share registrar]* receives your Participation Notice.

Note: A working day for the purposes of this offer is a day of the week other than Saturday and Sunday. *[Alternatively, where there are non-working days other than Saturday and Sunday that are applicable to the offer, set out the following applicable options:*

- Saturday and Sunday; and
- Waitangi Day, Good Friday, Easter Monday, Anzac Day, Sovereign's Birthday and Labour Day; and
- a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and
- if 1 January falls on a Friday, the following Monday or, if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday; and
- if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday.]”

Dated at Wellington this <sup>18<sup>th</sup></sup> day of April 2016.



Garth Stanish  
Director of Capital Markets  
Financial Markets Authority

### Statement of reasons

This notice, which comes into force on 22 April 2016 and is revoked on 21 April 2021, exempts Heartland Bank Limited (**HBL**) and its associated persons from the following provisions of the Financial Markets Conduct Regulations 2014 (the **Regulations**) in relation to unsolicited offers to acquire a power to dispose of shares in HBL:

- regulations 163 and 164 (which requires the offeror to notify the issuer of the offer, to provide a copy of the disclosure document to the issuer, and to identify the security holders who will receive the offer);
- the obligation in regulation 165 that an unsolicited offer be made in a disclosure document that complies with regulation 168 and 169;
- regulation 168 (which specifies the contents of a disclosure document, which must follow the format specified in that regulation and in Schedule 19 of the Regulations).

The Financial Markets Authority (the **FMA**) considers that it is necessary and desirable in order to promote the purposes of the Act to grant the exemptions because—

- the share sale plan provides for sales of shares at market value. An underlying policy consideration for the Regulations was to regulate offers that result in sales at less than market value. The effect of certain conditions is that shares will be sold at market value, via an on-

market sale in the ordinary course of trading on an NZX market (or certain off-market sales within current quotations) by an NZX trading and advising firm. The conditions of exemption are consistent with promoting the confident and informed participation of investors in the share sale plan as an alternative to unsolicited offers made by third parties at a discount to market price:

- the matters that are required to be disclosed under regulation 168 are not all relevant in the context of an offer under a share sale plan (for example a fair estimate of value of the power to dispose of shares) because the offeror is facilitating the sale of shares at a market price to unknown third parties. As such the exemptions avoid unnecessary compliance costs:
- the exemptions are subject to conditions that require disclosure that is relevant in the circumstances, including disclosure of the market price of the shares, expenses payable by shareholders, and alternatives shareholders have to participating in the plan. The conditions ensure that timely, accurate and understandable information is provided to investors to assist them make a decision whether or not to participate in the share sale plan:
- an offer under a share sale plan is made by HBL or its associated person with the consent of HBL, in respect of shares in HBL, so the requirement that prior notice be given to the issuer (in this case, HBL) under regulations 163 and 164 is unnecessary as this would be an unnecessary compliance cost.

The FMA considers that the exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemptions because:—

- the provisions in the Regulations that are relevant in the circumstances continue to apply:
- the key policy consideration underlying the unsolicited offer provisions in the Regulations is to regulate offers that are at less than the market value. The conditions require the shares to be sold at the market price on the NZX Main Board:
- the exemption from the disclosure obligations is subject to a condition that requires the disclosure of information that is relevant in the circumstances, including certain information that would otherwise be required to be disclosed by regulation 168:
- unsolicited offers can be made at any time. The Plan enables HBL to react to any such unsolicited offers by providing shareholders with an alternative. A five year term for the exemption is therefore appropriate.